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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/396,612	09/15/1999	J. CLARKE STEVENS	5016-(MEDO-5	7684

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EXAMINER

O'CONNOR, GERALD J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 12/09/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/396,612

Applicant(s)

Stevens et al.

Examiner

O'Connor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on June 5, 2002 (Dwg Correction) and September 30, 2002 (Amdt "B").
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-23 is/are pending in the application.
- 4a) Of the above, claim(s) 11-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on June 5, 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Preliminary Remarks

1. This Office action has been prepared in reply to the proposed drawing correction filed by applicant on June 5, 2002 (Paper N^o 8) and the amendment and arguments filed by applicant on September 30, 2002 (Paper N^o 10), together responsive to the Office action mailed February 21, 2002.
2. The amendment of claims 1-8 and 10 by applicant in Paper N^o 10 is hereby acknowledged.
3. The cancellation of claim 9 by applicant in Paper N^o 10 is hereby acknowledged.

Election/Restriction

4. Pending claims 11-23 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) for being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper N^o 5.

Drawings

5. The corrected or substitute drawing (newly added Figure 10), was received on June 5, 2002 (Paper N^o 8). This drawing is approved.

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Specification

6. Regarding newly added Figure 10, not mentioned in the brief description of the drawings, the specification is objected to as failing to comply with 37 CFR 1.74, which requires that, "When there are drawings, there shall be a brief description of the several views of the drawings and the detailed description of the invention shall refer to the different views by specifying the numbers of the figures and to the different parts by use of reference letters or numerals (preferably the latter)." Correction is required.

Claim Rejections - 35 USC § 112, Second Paragraph

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2-3 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Regarding claim 10, the term "smart" is a relative term which renders the claims indefinite. The term "smart" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

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10. Additionally, the claims are indefinite because the following recitations, found therein, lack a sufficient antecedent basis:

- In claim 2, lines 1-2: “the at least one shopping list”;
- In claim 3, lines 1-2: “the at least one shopping list”; and,
- In claim 10, line 4: “the smart list”.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

12. Claims 1-8 and 10, as best understood in light of any rejections under 35 U.S.C. 112, hereinabove, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Green et al.

13. Claims 1-8 and 10, as best understood in light of any rejections under 35 U.S.C. 112, hereinabove, are rejected under 35 U.S.C. 102(e) as being clearly anticipated by each of Kenney and Petrovich et al.

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Response to Arguments

14. Applicant's arguments filed September 30, 2002 have been fully considered, but they are not persuasive.

15. Regarding the argument that Green et al. disclose neither "establishing a shopping list trend," nor "generating an output list in accordance with the shopping list trend," Green et al. indeed disclose these features. See, in particular, column 3, lines 45-63, and the references therein to items that are "regularly ordered" (lines 54-58), which regularly ordered items a user can conveniently "incorporate into an order list currently being constructed" (lines 52-53).

16. Regarding the argument that Kenney does not disclose "the programmed device defined by claim 1," Kenney indeed discloses the programmed device defined by claim 1, as the system of Kenney indeed includes the use of "a programmed device accepting input data and executing instructions for automating inventory management," as required by claim 1.

17. Regarding the argument that Petrovich et al. do not disclose "the programmed device defined by claim 1," Petrovich et al. indeed disclose the programmed device defined by claim 1, as the system of Petrovich et al. indeed includes the use of "a programmed device accepting input data and executing instructions for automating inventory management," as required by claim 1.

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Conclusion

18. The prior art made of record and not relied upon is considered pertinent to the disclosure.

19. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, Jerry O'Connor, whose telephone number is (703) 305-1525, and whose facsimile number is (703) 746-3976.

GJOC

December 4, 2002



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